

Information concerning the tax liabilities of dietary supplements, vitamins and personal care products may be found at 86 Ill. Adm. Code 130.310. (This is a GIL.)

April 27, 2006

Dear Xxxxx:

This letter is in response to your letter dated March 31, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC is a state and local tax consulting firm located in CITY/STATE. As such, we contract with many multi-state clients in various industries. In doing so, we pride ourselves in researching all aspects of specific industry transactions in order to better serve our clients both current and future. To this end, we respectfully request a written opinion on the following scenario.

Scenario

Company A is a direct seller of dietary supplements, vitamins, and personal care products. Their products will be distributed and sold throughout the US using independent sales contractors. In regards to sales tax, we respectfully request a binding letter ruling on the taxability of the items listed below:

Dietary Supplement # 1: This dietary supplement is a protein supplement in powdered form to be mixed with a beverage before consumed. The label for this product states that it is a dietary supplement and also contains the 'Supplement Facts' box which lists the percentages of Calories, Sodium, Protein, Calcium, and Iron.

Dietary Supplement #2: This product is labeled as a dietary supplement, and is a shake that comes in powdered form to be mixed with water or milk before consumed. The 'Supplements Facts' box is on the label for this product which indicates the following:

Calories, Fat, Cholesterol, Sodium, Carbohydrates, Dietary Fiber, Sugars, Protein, Calcium, and Iron.

Dietary Supplement #3: This product is an energy tonic labeled as an herbal and mineral supplement containing 21 concentrated herbal extracts plus 6 minerals. This supplement is also labeled with the 'Supplements Facts' box that indicates the amount of Calories, Carbohydrates, Calcium, Iron, Phosphorus, Iodine, Magnesium, Potassium, and the Proprietary Blend of various herbs.

Dietary Supplement #4: In capsule form, these dietary supplements come in a fruit complex and a vegetable complex, and are intended to help individuals reach the recommended daily allowance of fruits and vegetables. The label states that it is a dietary supplement from whole food and contains a 'Supplement Facts' box indicating the following:

Fruit Complex - Proprietary Blend: Cherry, Orange, Grape, Pineapple, Cranberry, Blueberry, Plum, Strawberry, Blackberry, Bilberry, Apricot, and Papaya Powders

Vegetable Complex - Proprietary Blend: Parsley, Spinach, Beet, Garlic, Kale, Brussel Sprout, Broccoli, Carrot, Cabbage, Wheat Grass, Cauliflower, and Asparagus Powders

Dietary Supplement #5: Labeled as a dietary supplement for men only, this product is a proprietary blend of concentrated herbal extracts. The serving size is 1 tablespoon a day, and the label contains a 'Supplement Facts' box listing the following Herbal Extracts: Saw Palmetto berry, Damiana leaf, Ginseng root, Ginkgo Biloba leaf, and Muira Puama wood.

Dietary Supplement #6: This product is in tablet form and is labeled as a calcium supplement. The Supplement Facts box indicates that it contains Vitamin D, Calcium, Phosphorus, Magnesium, Sodium, and Potassium.

Dietary Supplement #7: As a naturally-sourced bioactive milk peptide, this product is intended to relieve stress and help aide with sleep. It comes in capsule form, is labeled as a dietary supplement, and contains the 'Supplement Facts' box on the label which lists Milk Protein Hydrolysate, and Sodium Caseinate (a milk protein) as the main ingredients.

Dietary Supplement #8: This supplement is an herbal and mineral complex in capsule form intended to aide in weight control. It contains ingredients such as green tee, guarana, and chromium picolinate, is labeled as a dietary supplement, and contains a 'Supplement Facts' box.

Dietary Supplement #9: This product is a dietary supplement for animals. The main ingredients listed are whey protein isolate and maltodextrin.

Vitamins: The vitamins are labeled as a multi-vitamin and mineral supplement which comes in tablet form. Vitamins C, E, B1, B2, B6, and B12 are shown in the 'Supplement Facts' box located on the label.

Toothpaste: This protein toothpaste contains whey protein and baking soda to fight plaque and tarter buildup, whiten teeth, and promote healthy gums. The label does not contain a 'Drug Facts' panel.

Cream: The cream is intended to moisturize and promote healthy-looking skin this product [sic] and does not include a 'Drug Facts' panel on its label.

Combination Package: There are several different combination packages that contain different combinations of the Supplements, Vitamins, etc. listed above as well as training booklets, CD's, and brochures. The package is charged as one line item and each item is not separately stated. If this package is a mixture of taxable and nontaxable materials then we request a ruling on whether or not your State would charge tax on the entire amount or if the taxable portions could be considered de minimus.

Shipping and Handling Charges: Shipping and Handling will be listed together on one line item with the description of 'Shipping and Handling.' The charge for shipment will be based on the amount charged by the 3rd Party Shipper.

Annual Renewal Fee: The Annual Renewal Fee is charged to distributors once a year to continue distribution of BRAND products. As a distributor, each individual is provided a personal web site, annual news letter, toll-free conference lines, toll-free Audio-on-demand system, and back office admin tools. All servers/equipment for services are located in LOCATION.

You can contact me

DEPARTMENT'S RESPONSE:

Information concerning the tax liabilities of dietary supplements, vitamins and personal care products may be found at 86 Ill. Adm. Code 130.310. In addition the Department has responded to numerous inquiries regarding these subjects through various letter rulings. The Department's regulations and letter rulings may be located on the Department's Internet website under the heading of "Laws/Regs/Rulings." For example, see ST-01-0170-GIL and ST-99-0299-GIL.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk